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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/546,095	06/16/2006	Katsuhiko Suzuki	105-89 PCT/US 1360	
23869 HOFFMANN	7590 02/07/2008 & BARON, LLP	3	EXAMINER	
6900 JERICHO	O TURNPIKE		ELLIS, SUEZU Y	
SYOSSET, NY 11791			ART UNIT	PAPER NUMBER
			1615	
			MAIL DATE	DELIVERY MODE
			02/07/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

•	Application No.	Applicant(s)			
	10/546,095	SUZUKI, KATSUHIKO			
Office Action Summary	Examiner	Art Unit			
	Suezu Ellis	1615			
The MAILING DATE of this communication appears on the cover sheet with the correspondence address Period for Reply					
A SHORTENED STATUTORY PERIOD FOR REPLY WHICHEVER IS LONGER, FROM THE MAILING DA - Extensions of time may be available under the provisions of 37 CFR 1.13 after SIX (6) MONTHS from the mailing date of this communication. - If NO period for reply is specified above, the maximum statutory period w - Failure to reply within the set or extended period for reply will, by statute, Any reply received by the Office later than three months after the mailing earned patent term adjustment. See 37 CFR 1.704(b).	ATE OF THIS COMMUNICATION 36(a). In no event, however, may a reply be tim will apply and will expire SIX (6) MONTHS from a cause the application to become ABANDONE	I. lely filed the mailing date of this communication. D (35 U.S.C. § 133).			
Status					
	1) Responsive to communication(s) filed on 18 August 2005.				
•—	, _				
3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is					
closed in accordance with the practice under <i>Ex parte Quayle</i> , 1935 C.D. 11, 453 O.G. 213.					
Disposition of Claims					
4) Claim(s) <u>1-5</u> is/are pending in the application. 4a) Of the above claim(s) is/are withdray 5) Claim(s) is/are allowed. 6) Claim(s) <u>1-5</u> is/are rejected. 7) Claim(s) is/are objected to. 8) Claim(s) are subject to restriction and/or					
Application Papers					
9) ☐ The specification is objected to by the Examine 10) ☑ The drawing(s) filed on 18 August 2005 is/are: Applicant may not request that any objection to the Replacement drawing sheet(s) including the correct 11) ☐ The oath or declaration is objected to by the Ex	a)⊠ accepted or b)☐ objected drawing(s) be held in abeyance. See ion is required if the drawing(s) is ob	e 37 CFR 1.85(a). jected to. See 37 CFR 1.121(d).			
Priority under 35 U.S.C. § 119					
12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f). a) All b) Some * c) None of: 1. Certified copies of the priority documents have been received. 2. Certified copies of the priority documents have been received in Application No 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)). * See the attached detailed Office action for a list of the certified copies not received.					
Attachment(s)	_				
 Notice of References Cited (PTO-892) Notice of Draftsperson's Patent Drawing Review (PTO-948) Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date 8/18/05. 	4) Interview Summary Paper No(s)/Mail Do 5) Notice of Informal P 6) Other:	ate			

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DETAILED ACTION

Priority

Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Information Disclosure Statement

The information disclosure statement (IDS) submitted on August 18, 2005 is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

Claim Objections

Claims 1, 2 and 4 are objected to because of the following informalities:

In claim 1, line 4, claim 2, lines 1-2, and claim 4, line 5, claim language recites "at least one or two or more selected from...". The phrase "at least one" is sufficient since the "or two or more" is redundant.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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Claims 1 and 4 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

With respect to claim 4, claim language recites a "mass ratio of a shell to a filler material of the seamless capsule is 5:95 to 70:30". It appears the filler material is considered everything but the shell, since it adds up to 100%. However, further in claim 4, claim language recites "a core liquid that includes the filler material". Therefore, it is unclear if the core liquid minus the filler material is taken into account of the ratios stated above, since in this instance, the ratio would be based on more than 100%. Please clarify.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nakamura et al. (WO 02/13819) in view of Kondo (JP 2001-89362). Hereinafter, US 2003/0195246 will be referenced as an English language equivalent of WO 02/13819.

With respect to claims 1, 2 and 4, Nakamura et al discloses a method of forming seamless soft capsule using a SPHEREX capsule filling machine. Applicants use the

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same apparatus in their example at page 25 of the specification. Therefore, the capsule filling apparatus of Nakamura et al. is considered to have the same set up as applicant's. The capsule shell comprises a shell material (gelatin) with a plasticizer (glycerin or polyethylene glycol) [0032], [0033]. The capsule is by weight 20% shell and 80% filling and approximately 8.5 mm (see Example 1 and 2). The capsules are hardened in a coolant liquid (hardening liquid), removed from the liquid, washed with a solvent and dried (Examples 1 and 2). Nakamura et al. fails to expressly disclose the inclusion of a crystallization agent. Kondo et al. discloses in a seamless capsule comprising a crystallizing agent (xylitol) where the crystals are formed by precipitated to the external surface of the shell (wrapper) when the shell is hardened [0014], [0018], [0021], [0022], [0024], [0026]. Kondo et al. further discloses the shell has white crystals that are uniform on the external surface, therefore is considered to create an opaque shell [0025], [0026]. It would have been obvious to one of ordinary skill in the art to modify the seamless capsule of Nakamura et al. to include a crystallizing agent in order to provide seamless capsules that can be swallowed easily, broken down physically by the teeth and the taste can be tasted instantaneously without dissolving, while decreasing the likelihood of the capsules adhering over time [0008], [0026].

With respect to claims 3 and 5, the modified Nakamura et al. fails to expressly disclose the crystallization agent being 10-80% by mass based on the total amount of the shell, excluding water. Kondo et al. discloses the weight ratio of crystallization agent to the surplus is a matter of design choice [0013], [0016], [0017] Kondo et al. further discloses an example where the ratio of xylitol to the surplus part (minus the

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xylitol) can be 40-200 to 130 [0016]. It would have been obvious to one of ordinary skill in the art to modify the weight ratio of the crystallizing agent to the total amount of the shell in order to optimize the desired properties [0008], [0026]. Further, discovering the optimum or working ranges involves only routine skill in the art. In re Aller, 105 USPQ 233.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Suzuki et al. (US 5,882,680) discloses a method of producing seamless capsules.

Telephone/Fax Information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Suezu Ellis whose telephone number is (571) 272-2868. The examiner can normally be reached on 8:30am-5pm (Monday-Friday).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Woodward can be reached on (571) 272-8373. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

SE

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